

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
YELLOW CORPORATION, <i>et al.</i> , ¹)	Case No. 23-11069 (CTG)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket No. 968
)	

**NON-ROLLING STOCK ASSET CURE OBJECTION
OF FREIGHT LINE PROPERTIES, LLC**

Freight Line Properties, Inc. (“FLP”), by its undersigned attorneys, respectfully submits this objection with respect to the *Notice of Potential Assumption or Assumption and Assignment of Certain Contracts or Leases Associated with the Non-Rolling Stock Assets* [Docket No. 968] (the “Cure Notice”) filed by the above-captioned debtors (the “Debtors”), and states as follows:

BACKGROUND

A. The FLP Lease

1. FLP and YRC Inc., d/b/a YRC Freight (“YRC”) are parties to a Lease Agreement concerning real property located at 2410 South 2700 West, Salt Lake City, Utah, dated February 25, 2010, as amended by Amendment No. 1 to Lease dated April 19, 2013 (collectively, the “Lease”).

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://dm.epiq11.com/YellowCorporation>. The location of Debtors’ principal place of business and the Debtors’ service address in these chapter 11 cases is: 11500 Outlook Street, Suite 400, Overland Park, Kansas 66211.

2. YRC defaulted pre-petition on its obligations under the Lease by, *inter alia*, failing to make the rent payment due August 1, 2023 in the amount of \$31,519.

3. Furthermore, Section 26 of the Lease requires the Debtor to pay a 5% late fee on any rent payment that is received five or more days late, or \$1,576.

4. In addition, Section 9 of the Lease of the Lease, among other things, requires the Debtor to “maintain and repair in a good and safe operating condition, all portions of the Leased Premises, including but not limited to, repair of the building structure, roof, yard, fence and underground utilities, windows, doors, dock doors, dock levelers, entrances and vestibules, and all electrical, mechanical, HVAC, plumbing and other fixtures and systems located within the Leased Premises, including the sprinkler system serving the Leased Premises.”

5. FLP obtained a Property Condition Assessment Report dated October 27, 2023 prepared by Property Condition Assessments, LLC (the “Report”). The Report demonstrates that the amounts required in repair, replacement, and upkeep of the property which is the subject of the Lease is \$2,051,700. A copy of the Report is available upon written request to the undersigned counsel.

6. YRC’s failure to pay rent due, the late fee on the rent due, and the various repairs, replacements, and upkeep as shown in the Report is \$2,084,795.

B. The Bankruptcy Case and Proposed Assumption or Assumption and Assignment of the FLP Lease

7. On August 6 and 7, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States District Court for the District of Delaware (the “Court”).

8. On September 15, 2023, the Court entered the *Order (I)(A) Approving the Bidding Procedures For the Sale or Sales of the Debtors’ Assets, (B) Scheduling Auctions and Approving*

the Form and Manner of Notice Thereof; (C) Scheduling Sale Hearings and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief [Docket No. 575] (the "Bid Procedures Order") by which the Court approved procedures for the assumption or assumption and assignment of executory contracts and unexpired leases and granted related relief.

9. In connection with the Bid Procedures Order, on October 26, 2023, the Debtors filed the Cure Notice, which included the following lease for which FLP is listed as a lessor, and also the cure amount listed below:

<u>Description of Lease</u>	<u>Cure Amount</u>
REAL PROPERTY LEASE – TERMINAL	\$31,519

OBJECTION TO ASSUMPTION OR ASSUMPTION AND ASSIGNMENT OF LEASE

10. Pursuant to Bankruptcy Code § 365(a), YRC, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." However, Bankruptcy Code § 365(b)(1) provides:

If there has been a default in an executory contract or expired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee-

- (A) cures or provides adequate assurance that the trustee will promptly cure, such default;
- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.

11. Pursuant to 11 U.S.C. §365, the cure amount must include all amounts necessary to cure any arrearage under the lease to be assumed. *See In re Handy Andy Home Improvement Centers, Inc.*, 196 B.R. 87, 93 (Bankr. N.D. Ill. 1996) (debtor must cure pre- and post-petition defaults prior to assumption).

12. As demonstrated above, YRC owes FLP the total sum of \$2,084,795 under the Lease as of the date of the filing of this objection.

13. FLP can only provide the information presently available regarding amounts owed under the Lease, while reserving the right to amend this objection as necessary to include any additional charges that arise.

14. Moreover, FLP is entitled to the recovery of attorneys' fees, late fees and interest as part of the cure pursuant to the terms of the Lease and Section 365(b)(1) of the Bankruptcy Code. *See generally In re Appleillinois, L.L.C.*, No. 13-20723, 2014 WL 294327 (Bankr. E.D. Ky. Jan. 24, 2014); *In re Senior Care Centers, LLC*, 607 B.R. 580 (Bankr. N.D. Tex. Oct. 4, 2019); and *In re Williams*, No. 10-11108 BLS, 2011 WL 2533046 (Bankr. D. Del. June 24, 2011).

15. In addition, given, among other things, the recent payment issues, FLP will require adequate assurance of future performance.

RESERVATION OF RIGHTS

16. FLP expressly reserves all of its rights under the Lease, the Bankruptcy Code, or other applicable law, including, without limitation, the right to (a) supplement or amend this Objection and to assert any additional issues with respect to any proposed assumption and assignment of the Lease on any and all grounds; (b) assert any and all additional issues in connection with any proposed cure amount for the Lease; and (c) assert any additional objections to the assumption and assignment of the Lease. FLP is entitled to the recovery of attorneys' fees, late fees and interest as part of the cure pursuant to the terms of the Lease and Section 365(b)(1) of the Bankruptcy Code.

WHEREFORE, FLP respectfully requests that this Court enter an Order denying the Debtors' proposed assumption or assumption and assignment of the Lease, requiring the Debtors to pay all amounts due under the Lease and provide adequate assurance of future performance by the reorganized debtors or any assignee, and for such other and further relief as may be appropriate.

Date: October 30, 2023
Wilmington, Delaware

/s/ Garvan F. McDaniel, Esq.
Garvan F. McDaniel, Esq.
HOGAN MCDANIEL
Attorneys at Law
1311 Delaware Avenue
Wilmington, DE 19806
Telephone (302) 656-7596
Facsimile (302) 656-7599

and

COHNE KINGHORN, P.C.
George Hofmann
111 East Broadway, 11th Floor
Salt Lake City, Utah 84111
Telephone (801) 363-4300
Facsimile (801) 363-4378
Attorneys for Freight Line Properties, LLC